

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

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| Consumers Illinois Water Company              | : |         |
|   | : |         |
|   | : | 02-0155 |
| Petition to put into effect new tariff sheets | : |         |
| implementing the recovery of, inter alia,     | : |         |
| court costs and attorney's fees incurred in   | : |         |
| sustaining and enforcing a lien against       | : |         |
| property owners with delinquent accounts.     | : |         |

**REPLY BRIEF ON EXCEPTIONS OF THE  
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to 83 Ill. Adm. Code 200.800, the Staff of the Illinois Commerce Commission ("Staff"), by and through its attorneys, hereby submits its Reply Brief on Exceptions in the above-captioned proceeding. Specifically, Staff responds to Consumers Illinois Water Company's ("CIWC" or "Company") Brief on Exceptions ("BOE").

**I. INTRODUCTION**

The Proposed Order ("PO") reflects a careful analysis of an extensive factual record and of the numerous briefs filed and arguments made by the parties. The PO examined CIWC's proposed Enforcement Cost Recovery Surcharge Rider ("ECRS" or "Rider") and supporting testimony to determine whether it was just and reasonable. CIWC does not take issue with the facts as presented by the PO. Rather CIWC argues that the facts lead to different conclusions than contained in the PO. Staff concurs with the finding in the PO that the Company has not demonstrated that the proposed Rider is just and reasonable and should not be approved.

Nothing in CIWC's BOE has persuaded Staff to alter its recommendation that the Illinois Commerce Commission ("Commission") should reject CIWC's proposed ECRS tariffs. CIWC makes essentially the same points and arguments it made in its previously submitted Brief and Reply Brief. Having already responded to the arguments in Staff's Initial and Reply Briefs, it would serve no purpose to repeat the arguments in this Reply Brief on Exceptions. Accordingly, Staff hereby adopts by reference its arguments as set forth in its Initial and Reply Briefs. Staff's position is discussed more fully below.

## **II. ARGUMENT**

### **A. The PO Correctly Concludes that the Rider is Not in the Public Interest**

The Company erroneously asserts that the PO's conclusion, that certain characteristics and probable consequences of the Rider are likely to reduce the public benefit from the Rider, is based on incorrect assumptions regarding the Rider. (CIWC BOE, p. 6) CIWC's argument that the Rider does not eliminate or reduce foreclosure costs is based more on semantics than substance. While it may be the case that the Rider does not eliminate the costs, the entire purpose behind the Rider is to ensure that the Company will not bear the costs of foreclosure. Similarly, although it is accurate that the Rider does not create any collection tools per se, a purpose for the Rider is to streamline the Company's ability to collect foreclosure costs. The PO correctly states that if the Rider were approved, CIWC would have increased incentive to foreclose on liens. The Company's argument that it would be required to demonstrate to the equity court that Enforcement Cost recovery does not alleviate this concern. Rather than rely on another court's determination about the appropriateness of recovery of enforcement

costs, the Commission should take measures to assure that this inappropriate incentive is not created (through adoption of the rider) in the first place.

The PO acknowledges important public policy concerns related to approval of a Rider that would facilitate real property divestiture, when it states, “the Commission begins with the assumption that the proposed Rider is unnecessary if presently available revenue collection mechanisms will suffice.” (PO, p. 10) It is the Company that loses sight of the circumstances in which the collection problems arose. It is true that the proposed Rider permits the Company and customer to agree on a payment arrangement that would avoid the sale of the customer’s property. However, again, the purpose of the Rider is to ensure that the Company will not bear the costs of foreclosure. As discussed further below, the relief sought should not be granted, given that the Company has failed to take advantage of other less draconian collection measures.

**B. CIWC Has Not Taken Advantage of Alternative Collection Methods**

The Company responds to the PO’s concern about the use of foreclosures and under utilization of traditional utility collection by arguing that it has no intention of giving up on traditional collection mechanisms. (CIWC BOE, p. 10) However, the record evidence demonstrates, as the PO order finds, that the Company is currently under-utilizing these collection mechanisms. For example, the Company has not filed liens in four years. (Staff Ex. 1.0, p. 7) It has not initiated foreclosure actions against the real property of any nonpaying customer. It has failed to utilize the property owner associations in Woodhaven and Candlewick or collection provisions in the Declarations of the subdivisions in order to facilitate collection. (Staff Ex. 1.0, p. 10)

Although the Company describes public information actions it would take if the Rider were approved, those same actions could have, but have not, been utilized in the absence of the proposed Rider. Ultimately, the Company has not used traditional collection methods to the full extent that they are available. Without having exploited those methods, it is impossible to determine that the Rider is necessary to enable the Company to collect past due accounts.

**C. Standardization Can Be Implemented at the Company's Discretion**

The Company argues that it is economies of scale, not standardization, that are necessary to reduce the costs of foreclosure, and that economies of scale are not possible unless it can recover its Enforcement Costs under the Rider. (CIWC BOE, pp. 12-13) As it has repeatedly indicated, the Company itself determines how many foreclosures will be initiated. (See for example, CIWC BOE, p. 3, p. 8) Thus, it is within the control of Company to determine whether economies of scale are achievable.

**D. Other Issues**

CIWC continues to argue that it presented evidence that the costs of a foreclosure will vary for reasons beyond the Company's control or cannot be predicted. (CIWC BOE, p. 13) The Company has failed to reconcile this argument with its argument that that the Company will make the ultimate decision to pursue a foreclosure and when to pursue a foreclosure. (See, CIWC Initial Brief, p. 20, RBOE pp. 3 & 8) The Company states that it is able to estimate the cost of a standard foreclosure. (See Id., and Id., at 12) Any claim that the costs are beyond the Company's control and cannot be predicted is unpersuasive. Recovery of costs through a Section 9-220.2 surcharge is limited to costs "which fluctuate for reasons beyond the utility's control or

are difficult to predict.” This provision is not applicable to the Company’s enforcement cost proposal. Furthermore, there has been no showing that these costs are significant enough to allow fluctuation beyond the utility’s control nor are they difficult to predict.

The Company has failed to justify its’ proposed annual reconciliation in their Brief on Exceptions. CIWC did not cite any authority, nor did it provide responses to the features of the reconciliation which were identified as “troubling” in the PO. (See CIWC BOE, pp. 16-17 and PO, at 26) The Company but simply restated their position that Section 9-220.2 authorizes use of a reconciliation procedure.

#### **IV. CONCLUSION**

The PO is correct in concluding that CIWC has not proven the necessity for the proposed Rider.

For all of the foregoing reasons, the Staff of the Illinois Commerce Commission respectfully requests that the Proposed Order not be revised.

Respectfully submitted,

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